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HOUSE BILL 409 By  
Briley

SENATE BILL 441  
By Cohen

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 13, relative to establishing uniform minimum procedures to ensure fundamental fairness in the application of the death penalty and to enact the "Capital Punishment Equal Protection Act of 2003".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Capital Punishment Equal Protection Act of 2003".

SECTION 2. Tennessee Code Annotated, Section 39-13-208, is amended by adding the following new subsections:

(e)

(1) As used in this section:

(A) "Prosecutor" means the attorney who has been assigned primary responsibility for prosecuting the case to which the term applies. If it cannot be ascertained that the district attorney general or person acting lawfully in his or her place has assigned primary responsibility for a case to someone other than himself or herself, then the district attorney or

person acting lawfully in his or her place shall be regarded as the prosecutor for purposes of this section.

(B) "First degree murder evaluation form" means a form upon which the prosecutor notes the presence or absence of statutory aggravating circumstances and upon which the district attorney general signifies his or her approval of any settlement of a death-penalty case for a sentence less than death.

(2) Every case in which a defendant is indicted for first degree murder shall be reviewed by the prosecutor to determine whether any statutory aggravating factors exist which would legally justify seeking a sentence of death or life without possibility of parole. In those cases in which no statutory aggravating factors are present, the prosecutor shall so indicate on the first degree murder form, which form shall be signed by the supervisor, if any, of the prosecutor and forwarded to the district attorney general, who shall acknowledge by affixing his signature to the same. The first degree murder form shall be kept in the case file and a copy thereof attached to the district attorney general's portion ("Section C") of the trial judge's report in first degree murder cases required under Rule 12 of the Rules of the Supreme Court upon final disposition of the case in the trial court.

(3) In first degree murder cases in which it appears that one (1) or more statutory aggravating factors are present, the prosecutor shall indicate on the first degree murder form which aggravating factors, in the prosecutor's judgment, apply to the case. The first degree murder form shall be signed by the prosecutor and kept in the case file and a copy thereof attached to the district attorney general's portion of the trial judge's report in first degree murder cases required under Rule 12 of the Rules of Supreme Court upon final disposition of

the case in the trial court. After discussing the case with the family of each victim, the prosecutor shall review the case in detail with the prosecutor's supervisor, if any, and with the district attorney general.

(4) If after initial review the district attorney general determines that a sentence of death remains a possible sanction, the district attorney general shall so notify counsel for the defendant in writing and shall, prior to making a final determination whether to seek a sentence of death, afford counsel a reasonable opportunity to:

(A) Provide mitigating information in writing or by live presentation;

and

(B) Explore bona fide plea negotiations on behalf of the defendant.

(5) The district attorney general shall personally review the case and consider:

(A) Any mitigating information known to the office or provided by defense counsel; and

(B) The advice of the prosecutor and supervisor, if any.

(6) Only after the district attorney general has determined that a sentence of death shall be sought may notice of such determination be provided to the court and to defense counsel.

(7) The decision whether to seek a sentence of death shall be made as promptly as practicable in order to provide ample notice to the court and defense counsel, ensure adequate preparation time for the defense, allow appointment of additional counsel where appropriate and select an appropriate trial date.

(8) Once notice has been filed of the state's intention to seek a sentence of death, the prosecutor shall not be authorized to settle the case upon a plea of

guilty to a lesser crime or for a punishment less than death without the approval of the district attorney general.

(9) The district attorney general shall seek a sentence of death only in those cases in which the evidence of guilt is substantial. A sentence of death shall not be sought in cases in which the evidence consists of the uncorroborated testimony of a single eyewitness or of a cooperating codefendant or accomplice. Informants who are serving sentences of confinement, or who have cases or investigations pending which could result in a sentence of confinement, may be used as corroborative witnesses but a death-penalty prosecution shall not be based principally upon testimony from such witnesses.

(10) Only a defendant who performed the acts resulting in the death of the victim or who planned or procured the victim's murder shall be eligible for consideration for a sentence of death. A codefendant who was present and who aided or abetted the murder shall only be eligible for consideration for a sentence of death where the facts establish that such codefendant knowingly engaged in actions that carried a grave risk of death and where, in so acting, the codefendant exhibited a reckless indifference to the value of human life.

(11) Until the review process has been completed, neither the district attorney general nor any member of the district attorney general's staff shall make any public comment about whether a particular case is appropriate for the death penalty. A prosecutor may comment that a particular case is legally eligible for death-penalty consideration in the future and may argue in open court that the defendant be held without bond because he or she is eligible for death-penalty consideration.

(12) The district attorney general shall maintain a record of the age, sex and race of all defendants and victims in each case in which a notice of intention to seek a sentence of death was filed.

(f)

(1) In all cases in which notice of intent to seek a sentence of death has been filed, the prosecutor shall provide liberal discovery to defense counsel. Defense counsel shall be provided with copies of all written materials, audiotapes and videotapes which the prosecutor could reasonably know are relevant to the case. Defense counsel shall initial every document in the file to indicate that it has been reviewed or shall furnish the prosecutor with other mutually agreeable documentation for that purpose. Pretrial statements of witnesses which are subject to disclosure during trial ("Jencks" material) may be reviewed during the discovery process in the discretion of the prosecutor. Copies of these statements shall be given to defense counsel when the statements are reviewed or at such time as the court directs, but no later than at the conclusion of jury selection. Copies of all statements in possession of the state shall be provided to defense counsel and filed with the court at the conclusion of jury selection. Notwithstanding the provisions of this section to the contrary, the prosecutor may withhold or delay disclosure of information for the safety of a witness or the public, provided, that any nondisclosure or delay is in conformance with the laws and rules governing discovery in criminal cases generally.

(2) The district attorney general shall cause written demand to be made for the production of all relevant information by all law enforcement agencies, laboratories and other agencies engaged in the investigative process.

(3) The district attorney general shall take all reasonably necessary steps to facilitate defense counsel's review of physical evidence in the possession of any agency of state or local government.

(4) The district attorney general shall cause appropriate DNA testing to be performed on all items of physical evidence for which there is reason to believe that the results of such testing will be relevant to determining the guilt or innocence of the defendant.

(5) The district attorney general shall not oppose the testing of any physical evidence by experts retained by defense counsel, provided that adequate safeguards are implemented to ensure the integrity of the process.

(g) Notwithstanding the limitations of § 40-30-209, a defendant who is under a sentence of death may review any and all relevant files in the possession of a district attorney general upon written request. Such files shall be made available to the defendant's attorney or other representative under the terms and conditions applicable to public records requests.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.